

CABBYOU1

Sentencing

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 Cr. 36 (CM)

5 MENACHEM YOULUS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 11, 2012
4:16 p.m.

10 Before:

11 HON. COLLEEN MCMAHON,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 NICOLE FRIEDLANDER

17 JANIS ECHENBERG

Assistant United States Attorneys

18 BRAFMAN & ASSOCIATES, P.C.

Attorneys for Defendant

19 BENJAMIN BRAFMAN

20 MARK M. BAKER

21 ALSO PRESENT:

GREG GHIOZZI, United States Postal Inspector

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1 (In open court)

2 THE DEPUTY CLERK: Honorable Colleen McMahon
3 presiding. This is 12 Cr. 36, *United States of America v.*
4 *Menachem Youlus*.

5 Your appearance, please.

6 MS. FRIEDLANDER: Good afternoon, your Honor. Nicole
7 Friedlander and Janis Echenberg for the government. With us
8 today is Postal Inspector Greg Ghiozzi.

9 MS. ECHENBERG: Good afternoon.

10 THE COURT: Good afternoon.

11 MR. BRAFMAN: Good afternoon, your Honor. Benjamin
12 Brafman and Mark Baker and my associate, Jacob Kaplan, for
13 Mr. Youlus, who is present and ready for sentencing. Good
14 afternoon, your Honor.

15 THE COURT: Good afternoon. Everybody have a seat.
16 This matter is on for sentencing under Docket No. 12 Criminal
17 36 01, *United States of America v. Menachem Youlus*.

18 Mr. Youlus, having been found guilty by plea to one
19 count of mail fraud and one count of wire fraud, each of them
20 Class C felonies, in violation of 18 United States Code,
21 Sections 1341 and 1343, respectively. Each count carries a
22 statutory maximum sentence of 20 years' imprisonment, three
23 years of supervised release, a \$250,000 fine or twice the gross
24 gain to the defendant or loss to identifiable victims other
25 than the defendant, and a \$100 special assessment.

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1 In connection with today's proceedings, I have
2 received and reviewed the presentence report prepared by United
3 States Probation Officer Walter J. Flynn. I have an
4 extraordinary number of other documents, all of which have
5 been called to my attention, all of which I will put on the
6 record.

7 I have sentencing memoranda from the government and
8 from Mr. Brafman, as well as an additional letter from
9 Mr. Brafman that is dated September 28, 2012, and addressed to
10 me.

11 I have a pile of victim impact letters that have been
12 submitted by Wendy Olsen Clancy, the victim witness
13 coordinator, with the United States Attorney's Office. Some of
14 them are from lawyers; some of them are from individuals who
15 were defrauded. This is that pile.

16 I have from Mr. Brafman two extensive binders
17 containing, I believe, a total of, Binder A, 79 letters; Binder
18 B, additional letters, not separately numbered, but as you can
19 see, it is an inch thick. In addition, I have several other--
20 okay. Those are from Mr. Brafman.

21 Then I have things that are filed-- I have what is
22 called Exhibit A. I'm not sure what this is Exhibit A to and
23 Exhibit B to.

24 Are these from the government's sentencing memorandum?

25 MS. FRIEDLANDER: Yes, your Honor. They're exhibits

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1 to our sentencing memorandum.

2 THE COURT: Exhibits from the government's sentencing
3 memorandum. Then there are Exhibits C, E, F, G and H to the
4 government's sentencing memorandum which have been filed under
5 seal.

6 Is there an Exhibit D to the government's sentencing
7 memorandum? Because I can't find it.

8 MS. FRIEDLANDER: Yes. D should have been with A and
9 B. Those were all-- A, B and D were the exhibits that we
10 filed.

11 THE COURT: Jimmy, is there a D in that pile
12 somewhere? Because I couldn't find D.

13 Okay. Then I have a consent order of forfeiture. I
14 have an order of restitution, which is not something that I'm
15 accustomed to seeing since I have pronounced restitution
16 orally.

17 THE DEPUTY CLERK: Here's Exhibit D. Oh, Exhibit D.
18 Let me look at Exhibit D. Okay.

19 Those are the government's sentencing memorandum
20 exhibits.

21 Then I have two letters dated October 10: One from
22 the United States Attorney, which submits the proposed
23 restitution order, and one from Mr. Brafman that addresses the
24 proposed restitution order. That's what I've got piled up here
25 on the bench.

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1 Is there anything else I should have seen in writing
2 prior to today's proceedings from the government?

3 MS. FRIEDLANDER: No, your Honor.

4 THE COURT: From the defendant?

5 MR. BRAFMAN: I don't believe so, your Honor, but may
6 I just ask for clarification? Your Honor held up a pile of
7 letters that your Honor classified as victim impact letters
8 that were provided by the government, including letters from
9 people who were defrauded. Among the impact letters that we
10 received from the government, which we quote in our memo
11 extensively, are people who are classified as victim impact
12 letters--

13 THE COURT: "I don't feel victimized in the same way
14 as other victims." I've got every -- this is just a pile of
15 letters I've gotten from the government.

16 MR. BRAFMAN: That's fine, your Honor.

17 THE COURT: All right?

18 MR. BRAFMAN: Yes. You have them all.

19 THE COURT: I have people on both sides of the aisles
20 here. I have victims who say I don't feel victimized, but I
21 have victims who want to kill the defendant. I've got
22 everybody-- and everybody in between, every shade of person in
23 between.

24 MR. BRAFMAN: Thank you very much, Judge.

25 THE COURT: Okay. Has the government reviewed the

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1 presentence report?

2 MS. FRIEDLANDER: Yes, your Honor, we have.

3 THE COURT: Additions, deletions or corrections?

4 MS. FRIEDLANDER: No, we don't. We don't have any
5 changes.

6 THE COURT: Ms. Friedlander, do you wish to be heard
7 on sentencing?

8 MS. FRIEDLANDER: Yes, your Honor, I do.

9 THE COURT: I thought you might.

10 MS. FRIEDLANDER: Your Honor, the defense has given
11 you a submission that talks at length about the defendant's
12 many good deeds in the community and the pain that his family
13 will feel if he goes to jail. I expect that we're going to
14 hear some more about that today.

15 I just want to be clear, we don't have any doubt about
16 either of those things and we do think the Court should take
17 those into account. But we want to be clear that there are
18 many other factors not addressed in their sentencing
19 submission that weigh in favor of a guidelines sentence in this
20 case.

21 In terms of the emotional impact of this crime,
22 Mr. Youlus has committed one of the most devastating frauds in
23 recent memory. He exploited people's need to remember loved
24 ones who suffered or died in the Holocaust. He manipulated his
25 own community's need to bear witness to a catastrophe among

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1 their people, and he did it all to enrich himself day in and
2 day out for years.

3 On top of that, as the Court knows, this is not a case
4 where the defendant was motivated by financial hardship or
5 desperation. Mr. Youlus had every advantage: Education,
6 citizenship, family support, secure employment, and financial
7 stability. Things that many people can only dream about. He
8 was motivated by pure greed to get money from innocent people
9 at the expense of their most sacred memories and beliefs.

10 The Court has received a number of powerful letters
11 from victims and there are some victims who would like to be
12 heard briefly today. There's one person who's written to the
13 Court who I don't believe intends to speak today whose presence
14 in the courtroom I'd just like to draw the Court's attention
15 to. His name is Menachem Rosensaft.

16 Mr. Rosensaft's parents survived the concentration
17 camps at Auschwitz and Bergen-Belsen. He himself was born in
18 the Displaced Persons camp at Bergen-Belsen. Mr. Rosensaft is
19 currently the vice president of the American Gathering of
20 Jewish Holocaust Survivors and Their Descendants, which is the
21 umbrella organization of Holocaust survivors and Their
22 Descendants in the United States. He's also the general
23 counsel of the World Jewish Congress, and he is a lecturer at
24 Columbia Law School and Cornell Law School, among other
25 places.

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1 I'd just like to read briefly from his letter, which I
2 think captures the significance of this crime to many members
3 of the Jewish community who are not direct financial victims of
4 this fraud.

5 He wrote: "The millions murdered by the Third Reich
6 deserve a rigorously factual and scrupulously honest
7 remembrance."

8 (Continued on next page)

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1 MS. FRIEDLANDER: "So do the hundreds and thousands of
2 Torah scrolls and other sacred Jewish writings and religious
3 artifacts that were decimated in the Holocaust together it with
4 thousands upon thousands of Jewish communities, Jewish homes,
5 synagogues and Hasidic prayer rooms across Nazi-occupied
6 Europe. Mr. Youlus is not the first to distort and falsify
7 Holocaust memory, but he is without question one of the most
8 reprehensible. Others have lied about their past to aggrandize
9 themselves or further an antiSemitic ideology. Mr. Youlus's
10 motivation was pure greed. He exploited the memory of the dead
11 to enrich himself illicitly."

12 Your Honor, would I have an opportunity to respond
13 after Mr. Brafman speaks?

14 THE COURT: The government always has an opportunity
15 to respond.

16 MS. FRIEDLANDER: Okay. Well, with that then, your
17 Honor, I'll rest on our submission. For the reasons that we
18 discussed in our sentencing memorandum, we ask that you
19 sentence the defendant to a guidelines sentence of 51 to 63
20 months.

21 THE COURT: It seems to me that it's appropriate now
22 that we hear, since it's really part of the government's
23 presentation, from any of the individuals who wish to speak
24 today. I've been advised that there are three individuals who
25 wish to speak.

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1 Good afternoon, ma'am.

2 MS. EPSTEIN MAKAR: Good afternoon, your Honor. My
3 name is Chaplain Mollie Epstein Makar, and I appreciate the
4 court's indulgence for me to spend a couple of minutes just to
5 give you my story of how this fraud affected us.

6 The basis of Jewish law and tradition is the Torah,
7 and the Torah contains narrative statements of law and
8 statements of ethics. Collectively, these laws, usually called
9 Biblical Law or Commandment, are sometimes referred to as the
10 Law of Moses or the Jewish Written Law. The Torah consists of
11 five books of the Hebrew Bible, known more commonly as the Old
12 Testament, and we believe that they were given by God to Moses
13 on Mount Sinai and include within them all of the Biblical Laws
14 of Judaism. The Torah is also known as the Pentateuch, or the
15 Five Books of Moses.

16 And now the word mitzvah. A mitzvah is a commandment,
17 one of the 613 relating to Jewish observance and religious
18 practice. The commandments are the centerpiece of Judaism
19 because they are where the faithfulness to God and his Torah
20 translate into action.

21 Every sphere of human activity falls under the Torah's
22 authority. From rising in the morning to retiring at night,
23 from birth until death, the commandments encompass every area
24 of Jewish life. This idea sets the scene for understanding how
25 the Torah commandments come to define and explain what living

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1 means for a Jew -- namely, the continual opportunities to
2 connect to God.

3 And I would like to turn our attention to one of these
4 613 commandments found in the Torah, and this is the positive
5 commandment for each and every Jewish man to write a Torah
6 scroll for himself. The source for this is found in the book
7 of Deuteronomy, chapter 31, verse 19, where it states, and I
8 quote, "And now write down this song for yourself." The
9 implication is that each person writes an entire Torah which
10 contains the song referred to in that verse. In rabbinic
11 literature, the highest ideal of all Jewish men is Torah study.
12 Engaging in the study of Torah is considered equal to a number
13 of the other mitzvahs -- as we call them, mitzvots -- such as
14 visiting the sick, honoring one's parents, and bringing peace
15 between people.

16 The reason I explain Torah and mitzvah is to enable
17 the court to understand the level of importance and
18 significance they hold in Jewish practice.

19 Now as I mentioned, a mitzvah is incumbent upon every
20 Jew to write or facilitate in the writing of a Torah. Writing
21 a Torah is not possible for the lay individual. It requires
22 extensive training and takes a professional over a year to
23 finish one scroll. For that reason, many people contribute
24 funds to enable a Torah to be scribed. And I have an example
25 here of a certificate from 1999 when my synagogue commissioned

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1 the scribing of a new Torah. Members of the congregation and
2 of the community at large contributed various sums of money
3 that together paid for the Torah. The completion of a scroll
4 is a cause for tremendous celebration. The completed Torah is
5 paraded into the synagogue with great jubilation and fanfare,
6 equivalent to the arriving of a bride for her wedding. Usually
7 the procession carries on for blocks and for streets, with
8 everyone celebrating the commission of this new Torah and
9 bringing it and its holiness into our midst. You can see from
10 this that my family contributed a sum of money to enable our
11 congregation to finance that new Torah. And we dedicated our
12 donation in honor of our parents' wedding anniversary and chose
13 a verse from the Torah that speaks to the relationship between
14 parents and children. In this way we all became partners in
15 the mitzvah of writing this new Torah.

16 At the time of my father's 75th birthday, February
17 2008, we were looking to do something meaningful in his Honor,
18 and my father comes from a long line of deeply religious,
19 committed Jews. His father was a cantor, his father's brothers
20 were cantors. A cantor is a member of the clergy who leads the
21 liturgical portion of a prayer service, performs weddings,
22 funerals, and the like. So we searched for some way to
23 appropriately honor this milestone.

24 My sister found the Save a Torah website. I called
25 the office in Baltimore and spoke with Ellen Elow-Mintz, who

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1 was the executive director at the time, and she explained the
2 wonderful works that Save a Torah was doing, and she told me
3 that she would send me a DVD showing actual rescues,
4 refurbishings, and placing of Torahs around the world. I
5 really thought that this would be a more than wonderful way to
6 honor my father's 75th birthday. What better way than
7 contributing to the continuance of Torah Judaism through an
8 organization that is actually hands on, taking damaged Torahs
9 from the depths of despair, those rescued from places
10 devastated during the Holocaust and other locations, and giving
11 them new life in new communities. I was told that the Torahs
12 were placed in communities that prior to that didn't have a
13 Torah. How privileged, we felt, to be a part of the work to
14 bring living Judaism into communities thirsting for the
15 opportunity to pray and to live as the Torah directs them.
16 This was also a beautiful way to fulfill the mitzvah of passing
17 on Judaism from one generation to the next, that we call in
18 Hebrew *l'dor vador*.

19 So I collected money from the family, my sister, my
20 children, and sent a donation in to Save a Torah. Ellen sent
21 me a beautiful letter to present to my father. I have a copy
22 of that here, if you're interested to see it, your Honor.

23 And we framed the letter and we presented it to dad.
24 He read the letter out loud and the tears began to form in his
25 eyes. By the time he finished reading the letter, the tears

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1 were streaming down his face. He was so overcome with emotion,
2 he had difficulty speaking. When dad was able to speak, he
3 expressed his deep appreciation for performing this wonderful
4 mitzvah in his name. He reminisced about his childhood and his
5 synagogue and the prominence of the Torah, the life lessons he
6 learned from the study of Torah. He elaborated about the
7 importance of this work and how elated he was that these Torahs
8 are being lovingly cared for and being placed for continued
9 use. He placed the framed letter prominently on the mantel in
10 the front room of his home, and that is where it stayed, till
11 now.

12 Later that evening we all watched the DVD that Ellen
13 had sent. It was so well done and so convincing that we all
14 had tears in our eyes.

15 From that time dad would occasionally refer to the
16 letter or show it to a visitor to the house and speak about the
17 wonderful work being done in restoring Torahs by Save a Torah.
18 That birthday gift was truly the best one we had ever given
19 him, or so we thought.

20 Then I began receiving notices from the US Department
21 of Justice Victims Notification System. I hadn't heard
22 anything about this on the news and so these letters were a
23 complete shock. I called the number, the phone number on the
24 letter and spoke to Wendy Olsen Clancy, the victim witness
25 coordinator, who explained the case to me, and I really

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1 appreciated her ability to make it understandable and the
2 respect she showed for the Torah and for Judaism in the way she
3 spoke.

4 I was truly shaken after my conversation with Wendy.
5 There were so many thoughts and emotions running through me,
6 but the most devastating was, what do I do now? Do I keep this
7 information to myself or do I tell my family? Especially, do I
8 tell my father? This information tormented me for months. My
9 sister and I realized that we were both receiving these
10 letters, and finally the letter came notifying us about this
11 court date today. This gave me the impetus to act. I decided
12 to tell my children. They were horrified, on many levels. The
13 idea that someone would use the Torah, the essence of our law
14 and our lives, as a vehicle to commit a crime was beyond
15 them -- beyond all of us, really. And it was embarrassing to
16 us as a people to find that a member of our clergy, someone we
17 entrust to teach us the Torah way of life, would use the Torah
18 and the horrors of the Holocaust to prey -- that's P-R-E-Y --
19 on fellow Jews and festivities and cause them harm. And we
20 felt embarrassed and angry at having fallen victim to a scam.

21 We then decided to tell our father, and it was one of
22 the most difficult things we had to do. The family was
23 together, and we told him what we learned from the letters and
24 the phone calls. The height of his elation that he showed at
25 receiving the letter for his birthday paled in comparison to

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1 the depths of sadness and upset he showed at receiving this
2 news. He said the same thing we all said: How can this be?
3 How can this happen? But in my father's own way, to try to
4 lessen the burden on his children, as we all do with our
5 children, he tried to make us feel better by telling us that
6 our intentions were honorable, that we readily contributed to
7 what we thought was a mitzvah in the making. The stain is not
8 on us. It still didn't erase the mortifying feeling and the
9 feeling of loss and victimization.

10 And your Honor, I spoke with my Rabbi about the
11 appropriateness of speaking here today, because it's not
12 comfortable to do this, for a fellow human being, for a fellow
13 Jew. But I know I was conflicted. And he told me that
14 although it is not for us to contribute to someone's
15 misfortune, it is incumbent upon us to bear witness to an
16 observed wrongdoing. And he said it would be important for me
17 to tell our story, our family's story. So with a heavy heart,
18 I stand before you today.

19 Thank you very much.

20 THE COURT: Thank you.

21 MS. EPSTEIN: Hello.

22 THE COURT: Hello.

23 MS. EPSTEIN: I'm Rachel Epstein, and I'll just
24 take -- I'll be very brief because my sister was so eloquent
25 and so authentic in everything that she has already recounted

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1 on behalf of our family.

2 I just think it needs to be said that -- how this has
3 got to be probably one of the saddest times to actually have to
4 address this court, and with our own people. This is our own
5 people. And with our history and what has happened to our
6 people, to think that this is something that one is doing to
7 another.

8 When I found Save a Torah, it was like our go-to
9 thing, and interestingly enough, you could see through my
10 checks, is there were several one right after another, saying
11 we found a fabulous, wonderful way to honor people that are
12 close to us, and so it became our thing. And to see something
13 like this is just absolutely overwhelming. But to the point
14 also where we have contributed several times on behalf of
15 clergy, Christian clergy who are scholars who I deal with in my
16 business life, who were so honored by this kind of thing, and
17 the embarrassment in how you even begin to explain. Unlike
18 Dad, who knew where I stand, I didn't even have the heart to
19 say to Christian clergy that, "Never mind what we told you.
20 That was really all of nothing."

21 So it does go a little bit beyond even our own
22 community, and I just wanted to impart those words. And thank
23 you very much.

24 THE COURT: Thank you.

25 MR. KUSHNER: Good afternoon, your Honor.

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1 THE COURT: Good afternoon, sir.

2 MR. KUSHNER: Thank you. My name is Robert Kushner.

3 THE COURT: Good. Thank you.

4 MR. KUSHNER: And it was in memory of my father that
5 the Torah was acquired from Menachem Youlus from supposedly a
6 grave in Kamyanets-Podilsky, which is the community in which my
7 father grew up, was born, and in which his siblings lived.
8 Because of the love for my father and the love of other members
9 of the family for my father, I decided that the best way to
10 honor him would be to dedicate a Torah that came from
11 Kamyanets-Podilsky in his memory and contribute it to our
12 synagogue.

13 As was explained a little while ago, when a new Torah
14 is brought into a synagogue, it's treated as the wedding. The
15 Torah is carried under a canopy, and in this particular case,
16 the Torah was carried by my 11-year-old grandson, who bears my
17 father's English and Hebrew names.

18 In my opinion, this is not a garden variety type of
19 fraud. It's not the kind of situation where somebody has been
20 deprived of money. Here, memories or honors are really being
21 trod upon. And there is tremendous disappointment and sadness
22 when that happens. We -- when the Torah was acquired, it was
23 with great jubilation that my wife and I -- at that point we'd
24 been married for almost 50 years, and she knew my father well,
25 and Menachem Youlus had referred us to a Rabbi Chinn, who was

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1 an Orthodox rabbi in Pittsburgh to whom I spoke. Now Rabbi
2 Chinn subsequently passed away, and I didn't know whether
3 Menachem Youlus was aware of it, so we wrote a letter telling
4 him that. And within the letter we said, my wife and I,
5 "Rabbi, I cannot even begin to tell you what a blessing you've
6 bestowed upon us by permitting us to acquire the Torah." So
7 you can imagine we were flying this high, only to be crashed to
8 the ground.

9 What is -- and I will be brief, your Honor. I'm aware
10 of the court's time. What is amazing to me is not only the
11 overall story which was untrue, but how many different variants
12 of the story there were. In the first instance, when we became
13 aware of the fact that there was another Torah, related to a
14 family by the name of Malinoff, who I believe lived in the
15 Poconos in Pennsylvania. The story that they were told was
16 that a tour stopped in Kamyanets-Podilsky and was told by a
17 farmer that there were tombstones with Hebrew lettering on
18 them. Among the members of the tour, according to what the
19 Malinoffs have said, was an agent for Menachem Youlus. He then
20 told Menachem Youlus what he was told by the farmer and,
21 according to this article, supposedly Menachem Youlus then went
22 to Kamyanets-Podilsky and dug up the Torah, and that story
23 becomes history.

24 This -- the story of the Torah took on in essence a
25 life of its own. It was -- articles were written clearly

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1 across the country. One article appeared in Hadassah Magazine,
2 which is a Jewish organization, distributed throughout the
3 country. An article appeared in The Christian Science Monitor.
4 And in that article, it says of Menachem Youlus, "Recounting
5 his experiences with all the calm of reciting a grocery list,
6 he says, 'I once spent the night in a Soviet prison, I was
7 beaten up in Germany, and lost two front teeth. I was once
8 knocked out.'" It then went on and said, "Two Torah scrolls
9 lay nestled among 260 set of bones that belonged to Jewish
10 children." Now this is what The Christian Science Monitor says
11 that Menachem Youlus told them.

12 In another article which appeared I believe in a blog,
13 it says, "The remnants of 260 men, women, and children were
14 still shrouded in clothing that bore the Star of David, which
15 Jews were forced to wear during the Holocaust. Discovered four
16 years ago, the scrolls --" and that's these two "-- were two of
17 more than 400 Torahs that Youlus and a team of scribes have
18 unearthed from a dark past. Youlus has spent the last 19 years
19 scouring Eastern Europe for them, working with fellow scribes
20 to restore the scrolls."

21 Now it's my understanding that Menachem Youlus never
22 went overseas so that all of these stories are nothing but
23 fabrication.

24 As the woman who spoke before me said, I too spoke
25 with my Rabbi and asked him whether it was appropriate for me

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1 to testify. This is a Jew testifying against another Jew. And
2 he said to me, "Bob, Judaism is about justice. Therefore, you
3 should testify." And that is what brought me from Pittsburgh,
4 Pennsylvania this morning to this courtroom. I thought in my
5 father's memory, it was terribly important that I do so, and
6 had he been alive, it is something he would have wanted me to
7 do.

8 And I thank the court for its time.

9 THE COURT: Thank you, sir. Mr. Brafman, have you
10 reviewed the presentence report and gone over it with your
11 client?

12 MR. BRAFMAN: Yes, your Honor.

13 THE COURT: I will hear you on sentencing.

14 MR. BRAFMAN: Your Honor, before I begin, there are
15 just two matters that I've told the government that we would
16 mention just for purposes of clarification.

17 The letter dated July 12, 2012 to probation in which
18 we listed certain objections is withdrawn, and the probation
19 officer has noted in his report just certain biographical
20 information that was changed, but to the extent that that has
21 not been changed, these objections are withdrawn.

22 Second, your Honor, I just want the record to reflect
23 and for the court to understand that any argument that I
24 advance either now or how we advanced it in written form, it
25 was our intention to request a nonguidelines sentence pursuant

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1 to a downward variance. We are not asking for any specific
2 downward departure, and to the extent the sentencing memorandum
3 labeled it as such, that was mistaken.

4 THE COURT: You know, I figured that that was what you
5 meant.

6 MR. BRAFMAN: I gave the government a commitment that
7 we would straighten that out.

8 THE COURT: Okay.

9 MR. BRAFMAN: Judge, I too spoke with my Rabbi, and I
10 don't know whether that's a good thing or a bad thing. I have
11 personally dreaded this day for many months, and it's nothing
12 personal. I've had the privilege of appearing in this court
13 from the first day, but this is, in 37 years, perhaps one of
14 the three or four worst moments I think I've ever had to spend
15 in the well of a courtroom -- for reasons having to do with the
16 case and for reasons having to do with me.

17 I listened to these victims, and there's nothing I can
18 say. And there's nothing I will say. And I listened to them
19 talk about the people whose memory is desecrated by what was
20 done, and that includes my grandparents, who were murdered in
21 Auschwitz. And I did save a Torah, and my father carried it
22 from a burning synagogue on Kristallnacht that is now restored.

23 So when this case came to me, I did not want to be in
24 this case. I spoke to a very prominent rabbi and said, "I'm
25 not the right guy. I carry too much baggage." He said,

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1 "You're the right guy. That baggage will help you be an even
2 more powerful advocate perhaps in this case than someone who
3 doesn't maybe get it and maybe doesn't understand the pain of
4 everyone in this case."

5 So I stand before you today not as a son or a
6 grandson; I stand before you with great respect as an advocate.
7 But I stand here with great respect for the victims, with great
8 respect for the pain that they have suffered, with great
9 respect for the damage done in the name of Judaism, in the name
10 of charity, and to the memory of those who perished in the
11 Holocaust. We cannot ignore those facts. The sort of pain in
12 this courtroom and in this case have weighed on my mind and
13 Mr. Baker's mind for months and months.

14 But it's interesting that with respect to each of the
15 victims who spoke eloquently, what I did not hear, and which I
16 commend them for, I did not hear a cry for vengeance, I did not
17 hear a request for the most severe punishment that the law
18 allows, and I did not hear anything about the word "compassion"
19 or lack of compassion. And that's what I'm going to talk about
20 today, Judge. I can't deal with the facts. The facts are the
21 facts. I think what we have essentially done is gotten to a
22 point with the government where we have essentially conceded
23 that this is a horrific crime and that once you have a horrific
24 crime, then the question is, how do you go about doing the best
25 you can, given the horrific facts you have, to at least make it

Cablyou2

1 as right as humanly possible and to hopefully convince a
2 sentencing court that you are not a worthless human being, that
3 you have many redeeming qualities, and that's what our
4 submissions I think have been about and that's what we are
5 trying to do. That's what my letter was about. I speak to the
6 court very respectfully, I hope, at all times, but very
7 diligently as an advocate who really, I think, trusts the
8 system and has grown up in this system and has worked on both
9 sides of this aisle and understands the role of the US
10 Attorney's Office. And these two ladies have conducted
11 themselves throughout these proceedings with great respect and
12 great diligence and professionalism, and I have nothing but
13 praise for both of them. They have proven to be a credit to
14 the United States Attorney's Office for the Southern District
15 of New York. So this isn't about them and it's not about me.
16 It's about now, today, and what we do.

17 And I want to just say one thing so your Honor doesn't
18 get me wrong. I know you've read everything, and I'm not going
19 to repeat all of the arguments we made, nor am I going to quote
20 from all of the letters. But I want to say this, because it's
21 something I was taught by colleagues. When you are in the well
22 of a courtroom, even if you know the judge has read everything
23 and even if you understand that you may be repeating an
24 argument you've already made, don't presume that the court has
25 made up their mind until you are finished and until the last

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1 word is spoken and do what you were supposed to do as an
2 ethical advocate. Be an advocate for your client. And I do it
3 for two reasons -- hopefully to convince your Honor that the
4 power of our argument has merit, or at least some merit; and
5 second, in fairness to Mr. Youlus, his young children are one
6 day going to read the transcript of these proceedings that are
7 available online almost instantaneously today, and they need to
8 know that there are redeeming qualities to their father, they
9 need to know that he is not all bad, and they need to know that
10 despite the bad thing that he did that is indefensible, someone
11 got up in a public courtroom and said, yes, this is a bad thing
12 that was done by a fundamentally good man. And I can't explain
13 it, and I'm not asking you to forgive him; I'm just asking you
14 to temper justice with mercy when you decide on the appropriate
15 punishment.

16 So let me just briefly, your Honor, suggest a few
17 things. And I will indicate to your Honor, I gave strict
18 instructions, which obviously were not followed, that I did not
19 want people in the courtroom, that I don't think it was
20 necessary, that the degree of embarrassment and humiliation did
21 not have to be exacerbated. These people came. Many of them
22 are victims. Many of them have asked to address the court, and
23 I said no, we're not doing this. This is not a tennis match of
24 victims. You're not -- your claim that you are not considered
25 a victim by yourself doesn't undo the damage done to the people

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1 who feel victimized. It doesn't help. What does help -- and I
2 think it's something which I think your Honor may consider --
3 is that people who were victimized nevertheless write to the
4 court, some of them very eloquently, and ask for compassion.
5 They don't forgive him, but they ask for compassion and
6 leniency on his behalf.

7 Your Honor, the real question before you today is how
8 much punishment is adequate and what form that punishment
9 should take. So to the extent that the government has claimed
10 that there is \$963,000 that is owed to the victims -- \$993,000
11 that's owed to the victims, we are going to pay that money back
12 and we are -- most of it is already in an escrow account
13 awaiting instruction as to how to pay that back. And we
14 offered, your Honor, at the time of the plea comment, which I
15 think was appropriate, quite frankly, that your Honor believed
16 that forfeiture should go to the victims rather than sit in
17 some government bank account. We will obviously follow the
18 court's direction. So to the extent that this defendant
19 unjustly enriched himself, can't do more than give the money
20 back, and whether he's giving it back because he wants you to
21 note that fact or because the government forces him to give it
22 back, the fact is that it's a consideration that the court may
23 consider.

24 Your Honor, the letters before your Honor, yes, there
25 are several hundred, and in the second volume -- we're sorry we

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1 did not index them, but in the second volume, there is an index
2 in the front that does number the letters, and the numbers of
3 the letters, the total is more than 200 letters. And the
4 letters are interesting, and I know that some letters mean more
5 than others when a sentencing court reads them and maybe some
6 letters, after you've been on the bench for a long time, you
7 just sort of -- "I get it. He's a good man. He did a nice
8 thing." But I want to read to you not from a letter. I want
9 to cite to you one of the cases -- we cite this our sentencing
10 memorandum, which is the *Serafini* case in the Third Circuit.
11 And what's interesting about the *Serafini* case is, that was a
12 guidelines case. It was in 2000, before *Booker* and all of the
13 progeny that essentially gives you more discretion, and that
14 was a case where the defendant in *Serafini* did three nice
15 things. Three. He did three things, went out of his way to
16 help three citizens, and the *Serafini* court made a big deal
17 about it. They said when you give money to charity, that's
18 okay, and it's something we would consider, but when you go out
19 of your way to help a fellow citizen, do something that takes
20 your time, takes your effort, that is extra credit. That is
21 important; maybe more important than simply being a charitable
22 person.

23 You have hundreds of letters in which the kindness of
24 Menachem Youlus to fellow citizens is discussed in detail, and
25 whether it's helping an elderly person or helping a sick child

Cablyou2

1 or a child with special needs, there is letter after letter
2 after letter that writes honestly and eloquently about good
3 things he did. Not writing a check, not giving ill-gotten
4 gains to a charity. I once heard a judge in this building say,
5 "I'm not impressed with somebody who steals a million dollars
6 and gives a hundred thousand to a charity. It doesn't move
7 me." But going out of your way to help hundreds of people long
8 before he ever thought that he would have to stand in the well
9 of a court and ask for compassion at the time of sentencing,
10 which is -- again, this is not niceness after you have a
11 criminal case so that a judge will look kindly upon you. This
12 is 25 years of being a good, decent person in which he has
13 helped people. How do you reconcile the two people, the nice
14 man who helps everyone, with the man who -- I can't. Maybe
15 there's a higher authority that will one day explain that to
16 me, but I can't, Judge. I can't reconcile it. And Menachem
17 Youlus recognizes that he has sinned not just by violating the
18 law, but in the statement that he wrote, which he will read in
19 a minute, he talks about standing before God and having to at
20 one point ask forgiveness from God. I am going to hope I am
21 not his advocate at that point. Asking the compassion from a
22 sentencing judge for this crime is I think different than
23 asking for forgiveness. That's a hard ask for forgiveness.
24 It's hard enough asking for compassion, but forgiveness for
25 people who were defrauded, I don't know if they're ever going

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1 to forgive him. Maybe by asking you to not severely punish
2 him, that brings out the best in maybe all of us and that even
3 in this moment when they are so angry, they don't -- they don't
4 ask you to do something which is solely within your discretion.

5 And then I want to read very quickly a quote that I
6 know your Honor is familiar with, and it's from a judge in this
7 building that all of us I think have great respect for. It's a
8 quote from *United States v. Adelson*, where Judge Rakoff said
9 something, which again, in that case, it was a pretty serious
10 crime. The guidelines were 20 years. Judge Rakoff imposed a
11 five-year sentence, I believe, because there were a hundred
12 people who wrote letters on behalf of the defendant in that
13 case. And Judge Rakoff said, in words that I wish I could have
14 written, to be candid, "Surely, if ever a man is to receive
15 credit for the good he has done and his immediate misconduct
16 assessed in the context of his overall life hereto, it should
17 be at the moment on his sentencing, when his very future hangs
18 in the balance. This elementary principle of weighing the good
19 with the bad, which is basic to all great religions, moral
20 philosophies, and systems of justice, was plainly part of what
21 Congress had in mind when it directed courts to consider as a
22 necessary sentencing factor the history and characteristics of
23 the defendant."

24 Judge, that's what I'm asking you to do under 3553.
25 You have before you a wide discretion that you didn't have when

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1 the guidelines were mandatory, and within the discretion that
2 you have is the right to impose a sentence that is sufficient
3 but not greater than necessary. You never had that discretion
4 when the guidelines were mandatory. In truth, many judges,
5 I've heard in the wells of courtrooms throughout the country,
6 have often said, "I wish I could do a different sentence but
7 I'm mandated to impose this sentence."

8 Your Honor, I am asking for a sentence sufficient but
9 not greater than necessary. And now I guess the question is,
10 what does that mean, and how much is that? And that's I think
11 the point that I want to address hopefully last. The numbers
12 that are provided by the Sentencing Commission, with all
13 respect, in many, many areas were somewhat arbitrary, and
14 subsequent to the *Booker* decision, the courts have allowed a
15 judge to conclude that those numbers are no longer even
16 presumptively reasonable and that the court must start with an
17 analysis but then should look to the defendant and the crime
18 that the person has been accused of committing and then impose
19 a sentence which I have said, which is sufficient but not
20 greater than necessary. And what the Supreme Court has said
21 only recently, the punishment should fit the offender and not
22 merely the crime. And I'm citing from *Pepper v. United States*,
23 quoting *Williams v. New York*. And your Honor, when you try and
24 craft a sentence that punishes the offender in this case and
25 not just the crime, I think it allows you to impose a sentence

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1 that does not require a guidelines sentence, because the crime
2 in this case is very serious. There's no dispute. But when
3 you look at the other characteristics of 3553, there is no
4 concern that this offender will act in a violent manner or hurt
5 anyone in a violent manner. There is no concern that he will
6 reoffend. That I think is uniquely unique to this case, if you
7 will, because this case is just so strange and so different.
8 He will never again be in a position to commit this crime.
9 He's not required to have the removal from society, if you
10 will, that might be appropriate in a case where you are
11 concerned about a defendant being a repeat offender or a repeat
12 danger to the community.

13 So then the question is, what's an appropriate form of
14 punishment, and what factors and considerations must your Honor
15 address or should your Honor consider? And in every government
16 memo that I've ever seen at sentencing -- and I don't say that
17 in a pejorative way -- when it comes to the family
18 circumstances, there is a short line, and the line basically is
19 that the defendant's family has no one to blame other than the
20 defendant for bringing that horror on them and the defendant
21 should have thought of this before. But we're beyond that
22 step. And you know, I know from something you've written that
23 there are -- there are these op-ed pieces that you write and
24 you don't file and you throw them in the trash. I've been
25 doing it for 30 years, Judge. I call it dictated but not

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1 printed. And you know, we sometimes do that at the spur of the
2 moment. But the one I'm writing, which I've been writing for
3 ten years, is, my adversary is always 30. As old as I get in
4 this business, my assistant United States attorney adversaries
5 are generally people who are substantially younger than I am.
6 And I don't say that in a bad way, because they're very
7 talented and capable people, but what they don't get, what I
8 didn't get, what I don't think anybody gets when you don't have
9 children, when you don't have a family that's been gone on for
10 25 or 30 years, as the defendant has -- he's got nine kids, and
11 he has a wife who is not well, and he has elderly parents who
12 are not well. And yes, he should have thought of that at the
13 time he committed these crimes. And it's clear from the manner
14 in which he committed these crimes that he didn't think about
15 the consequences at the time he committed these crimes or he
16 wouldn't have committed these crimes, because there's no one to
17 suggest that he is stupid. All of the money, all of the money
18 that was -- that was taken appears to have been squirreled
19 away. It's all sitting in some -- there's no trappings of
20 wealth, your Honor. There are no cars or fancy homes. The
21 probation report values his home at \$250,000. He lives there
22 with nine kids. I don't know what motivated him. I don't know
23 what created this fantasy life that he lived and to the damage
24 that he has done. But the question is now: What do we do?
25 And do we warehouse him for 51 months because that sounds like

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1 a good number? Is that a better number than 18 months or 24
2 months or home confinement and community service that he is so
3 ideally situated for? I think the number is arbitrary, and I
4 don't think your Honor should go to that number simply because
5 it's been requested or recommended.

6 I think your Honor should and I hope you have taken
7 into account everything I submitted. I know you have. I
8 appreciate the patience, because I know I repeated in the well
9 of the courtroom many of the arguments that I have made in
10 writing, and I don't know what else I can say. And I ask your
11 Honor, if there are specific questions that you want me to
12 address, I will do my best to address them. But thank you for
13 listening.

14 THE COURT: Actually, the one question I was going to
15 ask you, you've answered, which is: Where's the money? Now I
16 know. Thank you.

17 MR. BRAFMAN: It's all in the government's submission.
18 And a million of it is almost in my escrow account that they're
19 going to get the minute you sign the forfeiture order. And
20 that's what we're talking about. There are Torahs. There are
21 many, many Torahs that were bought. Maybe the invoices were
22 inflated, but they were certified as kosher and independently
23 examined as being real Torahs. So these people have Torahs.
24 There are kosher Torahs. Now the fact that the provenance was
25 not what it was and there were fantasy stories, I get it.

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1 That's why we're here. That's the crime. But it isn't, "I
2 took a million dollars and I went to Vegas or I bought a
3 Mercedes." That didn't happen in this case, which is very
4 often the case when a crime is motivated by greed, as the
5 government suggests.

6 THE COURT: Thank you, Mr. Brafman.

7 MR. BRAFMAN: Thank you.

8 THE COURT: Ms. Friedlander.

9 MS. FRIEDLANDER: Your Honor, just briefly, as I said,
10 we don't doubt that Mr. Youlus has committed good works, has
11 done many good deeds in his community. We don't think those
12 good deeds come close to outweighing all of the 3553(a) factors
13 that show that a guidelines sentence is completely appropriate
14 in this case. This crime was egregious. It was sustained. He
15 relied on his status as a clergy member to commit it.

16 And for all of those reasons and the other reasons we
17 set forth in our memo, this case is entirely appropriate to
18 sentence him to the guidelines range contained in his plea
19 agreement.

20 Thank you.

21 THE COURT: Mr. Youlus, I've read your letter. Do you
22 have anything you want to say to me?

23 THE DEFENDANT: Yes, your Honor.

24 Your Honor, I know that there is nothing that I can
25 say that will excuse my conduct. I know that I have sinned

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1 before God and also violated the laws of a wonderful country
2 that has been good to me and my family. I will carry that
3 shame and dishonor with me for the rest of my life.

4 I want to thank my lawyers for guiding me and helping
5 me to live through this nightmare. I want to thank my family
6 for still loving me despite the sadness and shame I have
7 brought upon them. I will spend the rest of my life trying to
8 find the appropriate way to apologize for the agony they now
9 have to live with. They are very good people, and I have let
10 them down terribly.

11 I don't know whether I merit compassion, but I have
12 prayed and still pray that you find it in your heart to punish
13 me compassionately and hopefully not separate me from my
14 family.

15 I know that I have a lifetime of atonement ahead of
16 me. I will spend the rest of my days on this earth trying very
17 hard to do good, even though I know that I will never be able
18 to restore my good name.

19 Thank you, your Honor.

20 THE COURT: Thank you. Have a seat.

21 The first thing I feel it necessary to do is to place
22 on the record of this proceeding a summary of why we're here.

23 Mr. Youlus was in the family business -- Jewish
24 Bookstore of Greater Washington, a store that sells Jewish
25 books and Judaica. And as I understand it, he was a scribe,

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1 one who knew the intricate art, the craft, ancient and
2 honorable, of creating and restoring Torah scrolls. I can't
3 describe for the record nearly as eloquently as Chaplain
4 Epstein did the importance, the meaning, the sacredness of the
5 Torah, to the Jewish community, to my own Christian community,
6 to the community of Islam, the third great Abrahamic religion.
7 The Books of Moses are foundation to us all.

8 Mr. Youlus founded a charity and solicited donations
9 in support of the stated mission of rescuing Torahs, locating
10 and acquiring Torahs that had survived the Holocaust or been
11 taken from persecuted Jewish communities, and to inspect,
12 repair, and restore these Torahs so that they could be used in
13 worship. A noble goal, a goal that was calculated, calculated
14 to play on the emotions of a people for whom the persecutions
15 of the early and middle part of the last century were a living
16 memory, many of whom were personally witnesses or who, through
17 their family, or what remained of their families, were
18 witnesses to the horrors of what happened in Nazi Germany, in
19 Eastern Europe, in Soviet Russia, and elsewhere in the world.

20 But we're not here because Mr. Youlus was not really
21 about the business of rescuing Torahs that had been lost to
22 persecution. That, in the end, is a religious matter. We are
23 here because Mr. Youlus is a liar and because he lied in order
24 to obtain money and because he utilized the beneficence of his
25 fellow citizens in the form of the tax code of the United

Cablyou2

1 States to structure his little enterprise so that he could
2 obtain money under false pretenses, for his own purposes. I
3 don't know what his purposes were. They weren't the usual
4 purposes. Mr. Brafman is correct. There's no condo in Miami,
5 there's no Mercedes, there are no exotic vacations. It's not
6 another purpose that I have confronted frequently in cases of
7 this ilk, which is taking money from this person so that it can
8 be used by the charitable light of the thief.

9 Fortunately Mr. Brafman did not stand up, because he
10 didn't have to stand up, he couldn't stand up and say that
11 Mr. Youlus had used the money he obtained under false pretenses
12 to give it to the poor or to build a synagogue in his own
13 community or to do anything like that, because if he said that,
14 then I would have said, well, you wouldn't say in those
15 circumstances, would you, that nobody has the right to take
16 other people's money and use it for what is charitable by their
17 own light. But that's not the case. As near as I can tell,
18 the reason is that Mr. Youlus has a screw loose, that
19 Mr. Youlus has this desire to be something he's not, which is
20 an adventurer, a hero. In the end that does not matter because
21 the reason for stealing does not matter. A misrepresenter's
22 reason for lying does not matter. It does not matter. What
23 matters is the lie and the obtaining of money under false
24 pretenses, pretenses to religious people, and we have heard
25 eloquently today, I have read, eloquently expressed, dozens

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1 upon dozens of letters from people whose religious
2 sensibilities were not just offended but trampled on by the
3 misrepresentations that were made. The misrepresentations were
4 to the entire American people, because Mr. Youlus and Save the
5 Torah claimed that Mr. Youlus wasn't earning any profit or
6 compensation from his work with the charity, which allowed Save
7 the Torah to obtain federal tax exempt status to which it was
8 not entitled, because it did not comply with the statute's
9 requirement that no founders or members of the board of
10 directors of the charity receive any profit from their position
11 with the group.

12 I believe the government estimated Mr. Youlus ended up
13 with about \$1.2 million. The fact that it's sitting in a bank
14 account and available to repay the people who would not have
15 given it to him if only they had known the truth doesn't mean
16 he didn't get it, or that he didn't get it by false pretenses.

17 It's a strange story. It's a sad story. It's an
18 incomprehensible story.

19 Now I'm sitting here, having listened to various
20 people. Mr. Brafman says that he's heartened no one who
21 spoke -- and certainly there's not much in the letters -- asked
22 for vengeance or sought retribution. But that is not the rule
23 of law, to exact vengeance.

24 Mr. Brafman also very eloquently said that forgiveness
25 would be a hard ask. That is undoubtedly true, but as I have

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1 told defendants over and over and over again, I'm not about
2 forgiveness. That is between Mr. Youlus and his maker. That
3 is between Mr. Youlus and the people he has hurt. The law is
4 about doing justice; doing justice to the perpetrator and
5 giving justice to the victims. The law in its own way is what
6 Chaplain Epstein's rabbi told her her statement would be about.
7 The law is about bearing witness, bearing witness to what we as
8 a society have agreed collectively are the rules of the game in
9 which we are all commonly engaged. Justice and witness are
10 satisfied by meting out a sentence that is sufficient but not
11 greater than necessary to carry out the goals of the sentencing
12 statute that has been crafted by the Congress of the United
13 States.

14 (Continued on next page)

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CABBYOU3

Sentencing

1 THE COURT: In deciding what is sufficient, but not
2 greater than necessary, I am to consider a group of people who
3 make it their business to think about these things, who have
4 gotten together and have come up with a guideline for what,
5 roughly, somebody who commits a crime like this one and who's
6 like Mr. Youlus, sort of, was to get by way of punishment.
7 That guideline would be 51 to 63 months in a federal
8 penitentiary. Thankfully, I am no longer shackled by that. It
9 is no longer a mandate, but it is something that I am required
10 to take into account.

11 Then I have to take into account the nature and
12 circumstances of the crime. And I can't quarrel with
13 Ms. Friedlander's characterization of the nature and
14 circumstances of the crime. For a member of the clergy to prey
15 on the religious sensibilities of his co-religions is, frankly,
16 a crime that turns my stomach in a way that few others do. You
17 are not the first rabbi, you are not the first man of the cloth
18 who has sat in front of me in these circumstances, and it
19 doesn't get any easier for me to think about these stories
20 because I've heard them before.

21 For those of you who express embarrassment because it
22 was one of your own community, one of your own members of the
23 clergy who had done this, and who wonder how you would explain
24 this to those of other faiths, please, you are not alone and we
25 all understand and appreciate and share your grief that this

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Sentencing

1 thing could have happened.

2 I have received letters from religious congregations,
3 from youth organizations, charitable organizations, kids, young
4 people donating their bar mitzvah money to this organization,
5 from groups of Holocaust survivors and their descendants, from
6 people who are comfortable, from people who are struggling
7 financially but for whom making this particular gesture was of
8 critical psychological and emotional importance.

9 And, Mr. Youlus manipulated those people and he preyed
10 on those people. And whatever the reason for it, there is no
11 excuse. It was brazen, it was horrible, and took a while for
12 it to be exposed. I certainly have read Mr. Rosensaft's
13 letter. Mr. Rosensaft appears to be the Harry Markopolos of
14 the story. He's the guy who got it first.

15 So the government's characterization of the nature and
16 circumstances of the offense is not something that would cause
17 me to vary from the guidelines. It might even cause me to go
18 above the guidelines. Certainly does not move me to vary from
19 the guidelines.

20 The history and characteristics of the defendant,
21 something else I must take into account. Mr. Youlus is
22 described by all of these people in these two books, whose
23 letters I have read, as being a person who does good things for
24 others. He helps with marriages, he prepares scrolls, he makes
25 kosher things that need to be kosherized. He's there with

CABBYOU3

Sentencing

1 advice.

2 The reason I was hoping someone would tell me what
3 happened to the money is usually these letters are all about
4 how he helps people, he gives me money. There's none of that
5 in there. Okay. So to the people he knows, he's a nice guy.
6 To the people he doesn't know, he didn't care. I believe that
7 in the Torah every Jew, and therefore every Christian, every
8 Muslim, is required to do good to the widow, to the orphan and
9 the alien in your midst. And I understand that to mean you
10 ought to be to strangers as you are to the people that you
11 encounter in your own community.

12 People who have written to me, in the other pile of
13 letters, people of whom Ms. Friedlander speaks, people who
14 spoke here today, they're strangers to you and you did not care
15 for them. And the fact that you are a rabbi, trained and
16 immersed in your religious tradition, it just makes it that
17 much worse. Because I must believe that one who is trained in
18 a religious tradition that like none other is founded on the
19 law knows that it is never right to take under false pretenses,
20 to pretend to be someone that you're not.

21 So neither the nature nor the circumstances of the
22 crime or the history and characteristics of the defendant
23 suggest that I should be particularly lenient here. I must
24 say, I feel the same way about the fact that you're going to
25 pay back the money that is sitting there waiting to be given

CABBYOU3

Sentencing

1 back to the people to whom it rightfully belongs. Whether
2 you're doing it because-- I hope you're not doing it to impress
3 me because it doesn't impress me. It's just something you have
4 to do. It's not extraordinary. You pay them back twice over,
5 three times over, ten times over, maybe that's extraordinary.
6 To give them back what they gave to you, that's not so
7 extraordinary.

8 So then we come to the next section of the sentencing
9 law. I'm supposed to think about what kind of a sentence would
10 punish you because, in the end, as I once said in print, you
11 know, I'm about retribute of justice. That's what I'm supposed
12 to do. I'm supposed to decide what the punishment is. And I'm
13 supposed to think about what will send a message to other
14 people who might be tempted to do the kind of thing that you
15 did. I have to think about proportionality, although, frankly,
16 it's very hard for me to acquaint this to anything that I've
17 ever encountered.

18 And I must tell you, I think you must go to jail, and
19 I think the guidelines get it about right. And I happen to
20 think that is a compassionate sentence, because if there were
21 no guideline suggested to me, I might well be tempted to give
22 you a whole lot more time. Will your family suffer? Of course
23 your family will suffer, and that is a terrible tragedy. You
24 have brought it on them yourself.

25 I hope and expect -- indeed, I will require -- that

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Sentencing

1 when you leave prison, you will live a righteous and honorable
2 life. If you don't, I will have to put you back in. But that
3 prospect does not move me to excuse you prison because that
4 would not be justice.

5 Finally, to those of you who have spoken so eloquently
6 and so movingly, I know the importance of Torah to your
7 communities and I grieve for the pain that you feel because
8 your gesture of honor on behalf of loved ones has been -- or so
9 it may seem -- thrown back in your face.

10 I love those five books. They're probably, just in
11 terms of literary merit, among the five best books ever
12 written; certainly among the most interesting. And I have to
13 believe that what they contain can somehow be divorced from
14 what has happened here and that the words on the scrolls that
15 do exist can be given life through your families, through your
16 congregations.

17 And that, ultimately, their meaning and the fact that
18 they still retain that meaning in spite of all this can be
19 found in the words of the prophet Jeremiah in a book that is
20 not Torah, but is Tanak. He said, "I will write the law in
21 their hearts." You could not speak the way you spoke today if
22 the law were not written in your hearts. This man cannot take
23 that away from you or from your loved ones or from your
24 memories or from your history. Hold to that.

25 I have reviewed the presentence report. I accept it

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1 and adopt as my findings the description of the offense and the
2 offense conduct, its calculation in the guidelines. The total
3 offense level, based primarily on the amount of the financial
4 loss, is 24. The criminal history category of the defendant is
5 I. And I should note, it is Criminal History Category I
6 because the defendant has never before been convicted of a
7 crime, but that does not make this conduct aberrational. This
8 is conduct that went on over a period of about seven years, day
9 in and day out, and that's not aberrational.

10 I accept and adopt as my findings the offender
11 characteristics that are set out beginning at paragraph 83 of
12 the presentence report. I believe, Mr. Brafman, that the
13 probation officer made the changes that were not otherwise
14 withdrawn in the most recent version of the presentence report
15 that I got on September 27.

16 MR. BRAFMAN: That's correct, your Honor.

17 THE COURT: Okay. So I don't have to make any
18 corrections to this document.

19 MR. BRAFMAN: That's correct.

20 THE COURT: Sir, will you please stand. Under Docket
21 No. 12 Criminal 36-01, a total offense level of 24, Criminal
22 History Category of I, I hereby sentence you, Menachem Youlus,
23 to be remanded to the custody of the Attorney General of the
24 United States and the Bureau of Prisons for a term of 51 months
25 to be followed by a term of three years' supervised release.

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1 The terms of imprisonment and supervised release are concurrent
2 on both counts.

3 The other financial penalties are such that I am not
4 imposing a fine other than there is a special assessment of
5 \$200 in the nature of court costs which is due and payable
6 immediately.

7 Before we get into the financial stuff, Mr. Brafman,
8 are there recommendations that you would like me to make
9 concerning this?

10 MR. BRAFMAN: Yes, your Honor. First, with consent of
11 the government and subject to your Honor's approval, we would
12 ask that the defendant be permitted to voluntarily surrender.
13 I've spoken to a representative of the Bureau of Prisons
14 concerning the amount of time needed for designation. We ask
15 for a surrender date of December 17th. Because of the
16 intervening holidays, it takes a little bit longer. If there
17 is a designation to the recommended facility or elsewhere prior
18 to that date, we can always advance the surrender date.

19 THE COURT: December 17th is fine with me.

20 MR. BRAFMAN: Thank you, your Honor. And we would ask
21 for a recommendation for religious and dietary reasons that the
22 defendant be permitted to serve his sentence in the Otisville
23 federal prison camp in Otisville, New York.

24 THE COURT: Otisville is--

25 MR. BRAFMAN: I know it's a recommendation.

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1 THE COURT: Otisville appears to be, as far as I know,
2 about the only place in the northeastern United States that may
3 be able to accommodate the defendant. By the same token,
4 Otisville is very full.

5 MR. BRAFMAN: I know, but we --

6 THE COURT: I will certainly make the recommendation,
7 but no guarantees.

8 MR. BRAFMAN: I understand it's only a recommendation,
9 your Honor. Thank you.

10 THE COURT: But I'm making it Otisville. I'm not
11 making it the camp. I'm saying Otisville. All right?

12 MR. BRAFMAN: Your Honor, to the extent that the
13 defendant is deemed camp eligible, I'm not hearing that your
14 Honor objects to that.

15 THE COURT: No, but that's for the BOP.

16 MR. BRAFMAN: I understand, your Honor.

17 THE COURT: All I'm saying is that I know that
18 Otisville has the ability to accommodate the religious
19 restrictions.

20 Okay. Now, sir, we have mandatory restitution in this
21 case, and I have been given an order by the government under
22 these new procedures that seem to be followed this days. The
23 order indicates that restitution will be paid in the amount of
24 \$990,366.05, and that amount is ordered paid as restitution
25 under the Mandatory Victims Restitution Act to the victims of

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1 the offenses charged in Counts One and Two, those victims being
2 listed on Schedule A.

3 Yes, Ms. Friedlander, you quickly want to jump up?

4 MS. FRIEDLANDER: Yes, actually, I do. We are going
5 to submit a slightly revised Schedule A to the Court in the
6 morning. The Schedule that we have submitted has a couple of
7 just typographical errors. It does not change the amount of
8 restitution owed or any material.

9 THE COURT: Mr. Brafman, is it all right with you--

10 MR. BRAFMAN: No objection.

11 THE COURT: -- if you look it over tomorrow and make
12 sure that it's all right?

13 MR. BRAFMAN: Yes, your Honor.

14 THE COURT: On this 11th day-- it is the 11th, isn't
15 it?

16 MR. BRAFMAN: 11th.

17 THE COURT: Thank you.

18 -- day of October, 2012, restitution is ordered in
19 that amount. And consistent with the Mandatory Victims
20 Restitution Act and Federal Rules of Criminal Procedure 49.1,
21 the schedule of victims is going to be filed under seal except
22 that copies may be retained, used or disclosed by the
23 government, the clerk's office, and the probation office in
24 order to effect the purposes of this order.

25 There is, in addition here, a consent order of

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1 forfeiture. I said at the time of the plea that I did not
2 understand, and I still do not understand, the idea of having
3 both restitution and forfeiture when it's the same money. As
4 far as I'm concerned, restitution comes first.

5 MR. BRAFMAN: Well, then, as I understand it then, the
6 amount that will be forfeited will be credited against the
7 restitution? That's the understanding we have with the
8 government, I believe.

9 THE COURT: If that's the understanding that you have
10 with the government, that's fine. If I ever hear that that
11 money is sitting in a federal bank account somewhere and has
12 not been distributed to the victims, I will be mightily upset.

13 MS. FRIEDLANDER: Yes. Your Honor, we had spoken with
14 the chief about the forfeiture of our office and we are going
15 to apply under the department--

16 THE COURT: I was hoping you would have applied before
17 today and gotten permission so I would be secure in the
18 knowledge that the victims would have gotten their money back.
19 That's all I care about.

20 MS. FRIEDLANDER: Yes, we understand. Your Honor, we
21 are permitted to apply by the Department of Justice upon the
22 entry of the forfeiture order, so we will apply immediately.

23 THE COURT: Oh, yes, the Department of Justice.
24 Always looking out for itself. Okay.

25 Well, it is hereby ordered that as a result of the

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1 offenses charged in Counts One and Two of the information to
2 which you have pled guilty, a money judgment in the amount of
3 \$862,044.33 in United States currency shall be entered against
4 you pursuant to Rule 32.2(b)(4) of the Federal Rules of
5 Criminal Procedure. This consent order of forfeiture is final.
6 as to the defendant, Menachem Youlus, as I read this order, it
7 is deemed part of your sentence, Mr. Youlus, and will be
8 included in your judgment of conviction.

9 Upon execution of this order of forfeiture and
10 pursuant to 21, United States Code, Section 853, the United
11 States Treasury Department shall be authorized to deposit the
12 payments on the money judgment in the Treasury Asset Forfeiture
13 Fund and the United States shall have clear title to such
14 forfeited property even though it really belongs to the
15 victims.

16 Pursuant to Rule 32.2(b)(3) of the Federal Rules of
17 Criminal Procedure, upon the entry of this order, the United
18 States Attorney's Office is authorized to conduct any discovery
19 that's needed to identify, locate or dispose of forfeitable
20 property, including taking depositions, propounding
21 interrogatories, requesting the production of documents, and
22 issuing subpoenas pursuant to Rule 45 of the Federal Rules of
23 Criminal Procedure.

24 All payments on the outstanding money judgment shall
25 be made by postal money order, bank or certified check made

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1 payable in this instance to the United States Treasury
2 Department and delivered by mail to the United States
3 Attorney's Office, Southern District of New York, Attention:
4 Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New
5 York, 10007, indicating Mr. Youlus's name and the case number.

6 This Court shall retain jurisdiction to enforce this
7 order and to amend it as necessary pursuant to rule 32.2(e) of
8 the Federal Rules of Criminal Procedure. I have signed the
9 order today, the 11th of October, at 5:53 p.m. And it is my
10 expectation that that money will be given to the victims.

11 Now, Mr. Youlus, when you get out of prison, you will
12 be on supervised release. Within 72 hours of your release, you
13 will report to a United States probation officer in this
14 district either here in Manhattan -- by that time I hope the
15 probation office will be back in this building -- or in White
16 Plains or in Middletown. You will be assigned a probation
17 officer and you will report to that probation officer on a
18 regular basis for three years. You will do everything the
19 probation officer tells you to do. You may do nothing that the
20 probation officer tells you not to do. You may not commit
21 another federal, state or local crime. You may not illegally
22 possess any controlled substance. You may not possess any
23 firearm or destructive device. The mandatory drug testing
24 condition is suspended. The defendant poses a low risk of
25 future substance abuse.

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1 You must cooperate in the collection of genetic
2 material, DNA, for inclusion in the criminal database. You
3 must obtain and maintain legitimate and verifiable employment,
4 which employment as a special condition cannot involve other
5 people's money. You cannot for that three-year period do any
6 kind of work that makes you responsible for other people's
7 money.

8 You may not associate with criminals. You may not be
9 found in places where criminal activity is being planned or
10 carried out. Your probation officer must at all times know
11 what your residence and work addresses are. You may not change
12 those addresses without giving ten days' advanced notice to the
13 probation department. And if there's an emergency, if there's
14 a gas leak in the house and you have to leave, within 48 hours
15 your probation officer must know where you can be found.

16 As special conditions of supervision, you must provide
17 your probation officer with access to any requested financial
18 information, and you shall not incur any new credit charges or
19 open any additional lines of credit without approval of your
20 probation officer unless you have paid the restitution. It has
21 been represented to me that the entirety of the restitution is
22 going to be paid forthwith. It is, therefore, not necessary to
23 set a payment schedule. The payment schedule is pay it within
24 the next 60 days.

25 MR. BRAFMAN: Can I get some guidance from your Honor

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1 in a moment, Judge?

2 THE COURT: Any time you want, Mr. Brafman.

3 MR. BRAFMAN: Thank you. Judge, we have an
4 understanding with the government -- and I know the mechanics
5 are a little bit tortured and it's nothing that you can
6 control. It was our understanding -- obviously based in part
7 on your Honor's comments at the time of this plea -- that the
8 Court wants the money to go to the victims and that there isn't
9 two piles of money available, so that this pile is going to
10 hopefully be transferred by asset forfeiture to the
11 government.

12 We will have all of the money within the 60 days that
13 your Honor-- we have most of it now. My concern is that once
14 I --

15 THE COURT: Here's what you should do, Mr. Brafman.
16 I'll give you guidance as to what you should do. You give the
17 government its \$862,000. You write a check to the United
18 States Marshal and you give the government that money and you
19 give the rest of the money to the clerk of the Court. And
20 then, as far as I'm concerned, it's quits and you have no
21 further obligation to give financial information to the
22 probation officer.

23 MR. BRAFMAN: That's fair.

24 THE COURT: That is my understanding. Okay?

25 MR. BRAFMAN: And my hope is that eventually that the

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1 balance of the money will go to the victims.

2 THE COURT: It better.

3 MR. BRAFMAN: Okay. I will do what your Honor
4 suggests.

5 THE COURT: Thank you.

6 As a special condition of supervision, Mr. Youlus, you
7 shall perform 100 hours of community service as directed by
8 your probation officer. And it is my recommendation to the
9 probation officer that the community service be directed to
10 persons outside of the defendant's community, because one of
11 the things that makes this crime a terrible crime is that the
12 defendant, who was very good to the people he knows, was very
13 not good to people he didn't know. So he should do good works
14 for people he doesn't know.

15 As I said, you're to report to the nearest probation
16 office within 72 hours of your release from custody. It is my
17 recommendation that you be supervised by your district of
18 residence.

19 And I don't anticipate that there will be any
20 restitution still owing by the time you get into prison. If
21 there still is restitution owing, then, if you're engaged in
22 the Bureau of Prisons' non-UNICOR work program, you'll pay \$25
23 per calendar quarter toward your criminal financial penalties,
24 or 50 percent of your gross monthly earnings if you're a UNICOR
25 Grade I through IV employee. But that only applies -- I don't

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1 want to make Mr. O'Neill's life miserable because he has to
2 write this -- but that only applies if the restitution hasn't
3 been paid by the time you report to prison.

4 I'm allowing you to surrender voluntarily on the 17th
5 of December. Mr. Brafman will be notified about your
6 designation to an institution. You have to report to that
7 institution before 2 p.m. If you're not there by 2 p.m., we'll
8 get a phone call at about 2:01; by 2:02 I will sign the warrant
9 for your arrest. So forewarned is forearmed.

10 The other thing that I have to say to you is I'm
11 really not expecting to see you again, Mr. Youlus, but if you
12 should transgress any of the terms and conditions of your
13 supervision -- the probation officers in this district
14 understand how I feel about it. I'm a zero tolerance Judge.
15 So if you should transgress, they'll bring you in front of me.
16 If I see you during that three-year period, I'll be extremely
17 upset. And when I get upset, I have a tendency to do things
18 that defendants don't particularly like, like put them back in
19 jail.

20 I just think it's only fair to warn you that that's my
21 predilection. I would, of course, listen to Mr. Brafman's
22 explanation for why you were there, but I start with a bias.
23 The bias is that during that three-year period, you can do
24 nothing wrong. Forewarned is forearmed. All right?

25 Mr. Brafman, is there anything else that we need to do

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1 from your perspective today?

2 MR. BRAFMAN: No, your Honor.

3 THE COURT: I thank you, Mr. Brafman. I actually --

4 MR. BRAFMAN: Your Honor, I'm sorry.

5 THE COURT: I can actually imagine how painful this
6 has been.

7 MR. BRAFMAN: Your Honor.

8 THE COURT: Yes.

9 MR. BRAFMAN: I'm sorry, I stepped on your Honor's
10 words, but I thank you for what you were saying.

11 Your Honor, the government has asked me to place on
12 the record in spot of this plea agreement, Mr. Youlus has
13 waived his right to appeal to the extent there was a sentence
14 of 51 months or within the guidelines.

15 THE COURT: I think 63 months or less. Is that
16 correct?

17 MR. BRAFMAN: Correct.

18 THE COURT: I knew I forgot something. Thank you.

19 Ms. Friedlander. She's ready. She's ready to get up.
20 Okay.

21 Do you recall, Mr. Youlus, that at the time you took
22 your plea, you and I had a conversation about your appellate
23 rights?

24 THE DEFENDANT: I remember that.

25 THE COURT: And do you recall that I told you that you

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1 had signed a letter with the government which provided that, if
2 I sentenced you to 63 months or less, you would not take an
3 appeal from your sentence? Do you remember that?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you recall that I asked you at that
6 time, were you signing the letter of your own free will?

7 THE DEFENDANT: Yes.

8 THE COURT: And you told me that you were. Do you
9 recall that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you adhere to that statement today?

12 THE DEFENDANT: I do, yes.

13 THE COURT: In that case, it's my understanding that
14 you have waived your right to take an appeal from your
15 sentence.

16 Is that also your understanding?

17 MR. BRAFMAN: Yes, your Honor.

18 THE COURT: Thank you very much.

19 Ms. Friedlander, is there anything else we need to
20 talk about?

21 MS. FRIEDLANDER: No. Thank you, Judge.

22 THE COURT: One of the victims, Mr. Epstein, mentioned
23 Ms. Clancy, but Ms. Clancy doesn't get a whole lot of public
24 credit for the work that she does, but she makes it very easy
25 on us judges. And I want to thank you for having organized

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1 this so well. Thank you very much.

2 Okay. These proceedings are closed.

3 (Adjourned)

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